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DOCUMENTS

WHAT THE FRAMERS OF THE FEDERAL CONSTITUTION THOUGHT OF THE NEGRO

The first important discussion in the Convention of 1787 to reflect the attitude of the framers of the Federal Constitution toward the Negro, was whether or not slaves should be considered a part of the population in apportioning representation in Congress on that basis. A precedent had been set in the Articles of Confederation in the provision for counting five slaves as three whites to determine the rate of taxation on the population basis. The free States contended that only the free inhabitants should be counted, but the slave States urged the recognition of slaves as a part of the population to secure to the South the power which it wielded until the Civil War.¹

Taking up this important question soon after the convention assembled,

The following resolution was then moved by Mr. Randolph, Resolved that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

It was moved by Mr. Hamilton seconded by Mr. Spaight that the resolution be altered so as to read

Resolved that the rights of suffrage in the national legislature ought to be proportioned to the number of free inhabitants

It was moved and seconded that the resolution be postponed—and on the question to postpone it passed in the affirmative

The following resolution was moved by Mr. Randolph seconded by Mr Madison

¹ In the preparation of these documents we used the notes and journals of Yates, McHenry and Madison and the subsequent writings of the framers of the Federal Constitution, but these extracts of the actual proceedings are copied from Farrand's *Records of the Federal Convention*.

Resolved that the rights of suffrage in the national legislature ought to be proportioned—it was moved and seconded to add the words “and not according to the present system”—On the question to agree to the amendment it passed in the affirmative. (Ayes—7 noes—0.)²

It was then moved and seconded so to alter the resolution that it should read

Resolved that the rights of suffrage in the national legislature ought not to be according

It was then moved and seconded to postpone the consideration of the last resolution—And, on the question to postpone, it passed in the affirmative The following resolution was then moved by Mr Madison seconded by Mr. G Morris.

Resolved that the equality of suffrage established by the articles of confederation ought not to prevail in the national legislature and that an equitable ratio of representation ought to be substituted.

It was moved and seconded to postpone the consideration of the last resolution.

(The following Resolution being the 2d. of those proposed by Mr. Randolph was taken up. viz—“that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.”)

Mr. M(adison) observing that the words (“*or to the number of free inhabitants.*” might occasion debates which would divert the Committee from the general question whether the principle of representation should be changed, moved that they might be struck out.

Mr King observed that the quotas of contribution which would alone remain as the measure of representation, would not answer; because waving every other view of the matter, the revenue might hereafter be so collected by the general Govt. that the sums respectively drawn from the States would (not) appear; and would besides be continually varying.

Mr. Madison admitted the propriety of the observation, and that some better rule ought to be found.

Col. Hamilton moved to alter the resolution so as to read “that the rights of suffrage in the national Legislature ought to be pro-

² *Records of the Federal Convention*, I, pp. 31-32.

portioned to the number of free inhabitants. Mr. Spaight 2ded. the motion.

It was then moved that the Resolution be postponed, which was agreed to.

Mr. Randolph and Mr. Madison then moved the following resolution—"that the rights of suffrage in the national Legislature ought to be proportioned."

It was moved and 2ded to amend it by adding "and not according to the present system"—which was agreed to.

It was then moved and 2ded. to alter the resolution so as to read "that the rights of suffrage in the national Legislature ought not to be according to the present system."

It was then moved & 2ded. to postpone the Resolution moved by Mr. Randolph & Mr. Madison, which being agreed to;

Mr. Madison, moved, in order to get over the difficulties, the following resolution—"that the equality of suffrage established by the articles of Confederation ought not to prevail in the national Legislature, and that an equitable ratio of representation ought to be submitted" This was 2ded. by Mr. Govr. Morris, and being generally relished, would have been agreed to when.)

Mr. Reed moved that the whole clause relating to the point of Representation be postponed; reminding the Come. that the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage, and in case a change should be fixed on, it might become their duty to retire from the Convention.

Mr. Govr. Morris observed that the valuable assistance of those members could not be lost without real concern, and that so early a proof of discord in the convention as a secession of a State, would add much to the regret; that the change proposed was however so fundamental an article in a national Govt. that it could not be dispensed with.

Mr. M(adison) observed that whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States, it must cease when a national Governmt. should be put into the place. In the former case, the acts of Congs. depended so much for their efficacy on the cooperation of the States, that these had a weight both within & without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the Genl. Govt. would take effect without the

intervention of the State legislatures, a vote from a small State wd. have the same efficacy & importance as (a vote) from a large one, and there was the same reason for (different numbers) of representatives from different States, as from Counties of different extents within particular States. He suggested as an expedient for at once taking the sense of the members on this point and saving the Delaware deputies from embarrassment, that the question should be taken in Committee, and the clause on report to the House (be postponed without a question there). This however did not appear to satisfy Mr. Read.

By several it was observed that no just construction of the Act of Delaware, could require or justify a secession of her deputies, even if the resolution were to be carried thro' the House as well as the Committee. It was finally agreed however that the clause should be postponed: it being understood that in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter (than from Delaware).

The motion of Mr. Read to postpone being agreed to

The Committee then rose. The chairman reported progress, and the House having resolved to resume the subject in Committee tomorrow,³

Adjourned to 10 OClock)

The next question was on the following resolve:

In substance that the mode of the present representation was unjust—the suffrage ought to be in proportion to number or property.

To this Delaware objected, in consequence of the restrictions in their credentials, and moved to have the consideration thereof postponed, to which the house agreed.⁴

McHenry records for the thirtieth of May that the Committee then proceeded to consider the second resolution in Mr. Randolph's paper.

That the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution or to the number of

³ *Records of the Federal Convention*, I, pp. 35–38.

⁴ *Ibid.*, I, pp. 39–40.

free inhabitants as the one or the other rule may seem best in different cases.

As this gave the large States the most absolute controul over the lesser ones it met with opposition which produced an adjournment without any determination.⁵

After frequent discussion and the failure to reach an agreement to safeguard the interests of the small States while giving due weight to the population of the large the effort to apportion representation in the national legislature assumed this form in the Committee of the Whole:

It was moved by Mr. King seconded by Mr Rutledge to agree to the following resolution namely

Resolved that the right of suffrage in the first branch of the national Legislature ought not to be according to the rule established in the articles of confederation; but according to some equitable ratio of representation

And on the question to agree to the same

it passed in the affirmative (Ayes—7; noes—3; divided—1.)

It was then moved by Mr. Rutledge seconded by Mr Butler to add the following words to the last resolution

“namely, according to the quotas of contribution”

It was moved by Mr Wilson seconded by Mr C. Pinckney to postpone the consideration of the last motion in order to introduce the following words, after the words “equitable ratio of representation” namely.

“in proportion to the whole number of white and other “free Citizens and inhabitants of every age, sex and condition, “including those bound to servitude for a term of years, “and three fifths of all other persons not comprehended in “the foregoing description, except Indians, not paying taxes “in each State”

On the question to postpone

it passed in the affirmative. (Ayes—10; noes—1.)

On the question to agree to Mr Wilson’s motion

It passed in the affirmative (Ayes—9; noes—2.)

It was then moved by Mr Wilson seconded by Mr Hamilton to adopt the following resolution, namely,

“resolved that the right of suffrage in the second branch “of the national Legislature ought to be according to the rule “established for the first”

⁵ *Records of the Federal Convention*, I, p. 40.

On the question to agree to the same
it passed in the affirmative (Ayes—6; noes—5.)⁶

In the Committee of the Whole on the eleventh of June:

(It was then moved by Mr. Rutledge 2ded. by Mr. Butler to add to the words "equitable ratio of representation" at the end of the motion just agreed to, the words "according to the quotas of Contribution. On motion of

Mr. Wilson seconded by Mr. C. Pinckney, this was postponed; in order to add, after, after the words "equitable ratio of representation" the words following "in proportion to the whole number of white & other free Citizens & inhabitants of every age sex & condition including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State." this being the rule in the Act of Congress agreed to by eleven States, for apportioning quotas of revenue on the States. and requiring a census only every 5—7, or 10 years.

Mr. Gerry thought property not the rule of representation. Why then shd, the blacks, who were property in the South be in the rule of representation more than the cattle & horses of the North. On the question.

Mass: Con: N. Y. Pen: Maryd. Virga. N. C. S. C. and Geo: were in the affirmative: N. J. & Del: in the negative. (Ayes—9; noes—2.) Mr. Sherman moved that a question be taken whether each State shall have (one) vote in the 2d. branch. Every thing he said depended on this. The smaller States would never agree to the plan on any other principle (than an equality of suffrage in this branch. Mr. Ellsworth seconded the motion.) On the question for allowing each State (one) vote in the 2d. branch.

Massts, no. Cont, ay. N. Y. ay. N. J. ay. Pa. no. Del. ay Md. ay. Va. no. N. C. no. S. C. no. Geo. no. (Ayes—5; noes—6.)

(Mr. Wilson & Mr. Hamilton moved that the right of suffrage in the 2d. branch ought to be according to the same rule as in the 1st. branch.)

On this question for making the ratio of representation the same in the 2d. as in the 1st. branch (it passed in the affirmative:) Massts. ay. Cont. no. N. Y. no. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay. (Ayes—6; noes—5.)⁷

⁶ *Records of the Federal Convention*, I, pp. 152-153.

⁷ *Ibid.*, I, pp. 200-202.

On the same day

Mr. Wilson was of opinion, and therefore moved, *that the mode of representation of each of the states ought to be from the number of its free inhabitants, and of every other description three fifths to one free inhabitant.* He supposed that the impost will not be the only revenue—the post office he supposes would be another substantial source of revenue. He observed further, that this mode had already received the approbation of eleven states in their acquiescence to the quota made by congress. He admitted that this resolve would require further restrictions, for where numbers determined the representation a census at different periods of 5, 7 or 10 years, ought to be taken.

Mr. Gerry. The idea of property ought not to be the rule of representation. Blacks are property, and are used to the southward as horses and cattle to the northward; and why should their representation be increased to the southward on account of the number of slaves, than horses or oxen to the north?

Mr. Madison was of opinion at present, to fix the standard of representation, and let the detail be the business of a sub-committee.

Mr. Rutledge's motion was postponed.⁸

Discussing whether the apportionment should be according to taxation or numbers, Wilson considered

Either Rule good—by Numbers best to ascertain the Right of Representn. this agreeably to the Sentiments of 11 States—Impost alone will not be sufficient to answer the national Exigencies—Revenues arising from Postage—The present Quota not a lasting Rule—People to be numbered at fixed Periods—A Rule arising from Property and Numbers—

Gerry. Rule of Taxation not the Rule of Representation—4 might then have more Voices than ten—Slaves not to be put upon the Footing of freemen—Freemen of Massts. not to be put upon a Footing with the Slaves of other States—Horses and Cattle ought to have the Right of Representn. Negroes—Whites—⁹

On the thirteenth of June Randolph submitted another resolution agreed to in the Committee of the Whole.

⁸ *Records of the Federal Convention*, I, pp. 205–206.

⁹ *Ibid.*, p. 208.

Resolved that the right of suffrage in the first branch of the national Legislature ought not to be according to the rule established in the articles of confederation; but according to some equitable ratio of representation—namely in proportion to the whole number of whites and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.¹⁰

The following propositions from New Jersey moved by Patterson closely connected the apportionment of requisitions with that of representation:

3. Resd. that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs. be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs. shall be exercised without the consent of at least¹¹

Again on the fifteenth of June it was suggested that

3. The rule of apportioning Requis: on the States shall be the Whites $\frac{3}{5}$ of all others—if the Req. is in arrear in any State, Congress shall have authority to devise & pass acts remedial in such case.

On the fifth of July the committee considering the question of representation reported on the 40,000 basis which repeatedly came before the Convention. It provided:

That in the first branch of the legislature, each of the states now in the union, be allowed one member for every 40,000 inhabitants,

¹⁰ *Records of the Federal Convention*, I, p. 227.

¹¹ *Ibid.*, I, p. 243.

of the description reported in the seventh resolution of the committee of the whole house—That each state, not containing that number, shall be allowed one member.¹²

Reporting on this question the fifth of July, the Committee of the Whole decided to submit:

That the subsequent propositions be recommended to the Convention, on condition that both shall be generally adopted.

1st That in the first branch of the Legislature each of the States now in the Union be allowed one Member for every forty thousand inhabitants of the description reported in the seventh resolution of the Committee of the whole House. That each State not containing that number shall be allowed one Member—That all Bills for raising or appropriating money and for fixing the salaries of the Officers of the Government of the United States, shall originate in the first Branch of the Legislature, and shall not be altered or amended by the second Branch and that no money shall be drawn from the public Treasury but in pursuance of appropriations to be originated by the first Branch. 2ndly That in the second Branch of the Legislature each State shall have an equal Veto.

Discussing this question on the sixth of July:

Mr. Pinkney saw no good reason for committing. The value of land had been found on full investigation to be an impracticable rule. The contributions of revenue including imports & exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial States. The number of inhabitants appeared to him the only just & practicable rule. He thought the blacks ought to stand on an equality with whites: But wd.—agree to the ratio settled by Congs. He contended that Congs. had no right under the articles of Confederation to authorize the admission of new States; no such cases having been provided for.¹³

On the ninth of July, according to Madison, Mr. Gorham said:

Some provision of this sort was necessary in the outset. The number of blacks & whites with some regard to supposed wealth

¹² *Records of the Federal Convention*, I, pp. 523, 524.

¹³ *Ibid.*, I, p. 542.

was the general guide. Fractions could not be observed. The Legislature is to make alterations from time to time as justice & propriety may require, Two objections prevailed agst. the rate of 1 member for every 40,000 inhts. The 1st. was that the Representation would soon be too numerous: the 2d. that the Western States who may have a different interest, might if admitted on that principal by degrees, out-vote the Atlantic. Both these objections are removed. The number will be small in the first instance and may be continued so, and the Atlantic States having ye Govt. in their own hands, may take care of their own interest by dealing out the right of Representation in safe proportions to the Western States. These were the views of the Committee.¹⁴

On the tenth of July the following interesting comment was made.

Mr. Dayton observed that the line between the Northn. & Southern interest had been improperly drawn: that Pa. was the dividing State, there being six on each side of her.

Genl. Pinkney urged the reduction, dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

Mr. Govr. Morris regretted the turn of the debate. The States he found had many Representatives on the floor. Few he fears were to be deemed the Representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to have its weight; but not all the weight. If the (Southn. States are to) supply money. The Northn. States are to spill their blood. Besides, the probable Revenue to be expected from the S. States has been greatly overated. He was agst. reducing N. Hampshire.¹⁵

In connection with determining the basis of representation the following was offered on the eleventh of July:

“Resolved That in order to ascertain the alterations that may happen in the population and wealth of the several States a census shall be taken of the free inhabitants of each State, and three fifths of the inhabitants of other description on the first year after this form of Government shall have been adopted—and afterwards on every term of years; and the Legislature shall alter or augment the representation accordingly”

¹⁴ *Records of the Federal Convention*, I, pp. 559–560.

¹⁵ *Ibid.*, I, p. 567.

It was moved and seconded to strike out the words

“three fifths of”

which passed in the negative. (Ayes—3; noes—7.)

It was moved and seconded to postpone the consideration of the resolution proposed in order to take up the following namely.

Resolved That at the end of years from the meeting of the Legislature of the United-States and at the expiration of every years thereafter the Legislature of the United States be required to apportion the representation of the several States according to the principles of their wealth and population.

On the question to postpone, it passed in the negative

(Ayes—5; noes—5;)

It was moved and seconded to agree to the first clause of the resolution namely.

“That in order to ascertain the alterations that may happen in the population and wealth of the several States a “Census shall be taken of each State”

which passed in the affirmative (Ayes—6; noes—4.)

(To adjourn. Ayes—1; noes—9.)

It was moved and seconded to agree to the following clause of the resolution, namely

“and three fifths of the inhabitants of other description”

which passed in the negative. (Ayes—4; noes—6.)

It was moved and seconded to agree to the following clause of the resolution, namely

“On the first year after this form of government shall “have been adopted”

which passed in the affirmative (Ayes—7; noes—3.)

It was moved and seconded to fill up the blank with the word “fifteen” which passed unanimously in the affirmative (Ayes—10; noes—0.)

It was moved and seconded to add after the words fifteen years the words “at least”

which passed in the negative Ayes—5; noes—5.)

It was moved and seconded to agree to the following clause of the resolution namely

“and the Legislature shall alter or augment the representation accordingly”

which passed unanimously in the affirmative (Ayes—10; noes—0.)

On the question to agree to the resolution as amended it passed unanimously in the negative. (Ayes—0; noes—10.) and then the House adjourned till tomorrow at 11 o'clock A. M.¹⁶

Taking up the question, Mr. Williamson urged again on the eleventh of July the counting of five Negroes as three white persons.

Mr. Williamson was for making it the duty of the Legislature to do what was right & not leaving it at liberty to do or not do it. He moved that Mr. Randolph's proposition be postponed, in order to consider the following "that in order to ascertain the alterations that may happen in the population & wealth of the several States, a census shall be taken of the free white inhabitants and $\frac{3}{5}$ ths of those of other descriptions on the 1st year (after this Government shall have been adopted) and every year thereafter; and that the Representation be regulated accordingly."¹⁷

Mr. Butler & Genl. Pinkney insisted that blacks be included in the rule of Representation, *equally* with the whites: (and for that purpose moved that the words "three fifths" be struck out.)¹⁸

Mr. Gerry thought that $\frac{3}{5}$ of them was to say the least the full proportion that could be admitted.

Mr. Ghorum. This ratio was fixed by Congs. as a rule of taxation. Then it was urged by the Delegates representing the States having slaves that the blacks were still more inferior to freemen. At present when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on ye. former occasion had convinced him that $\frac{3}{5}$ was pretty near the just proportion and he should vote according to the same opinion now.

Mr. Butler insisted that the labour of a slave in S. Carola. was as productive & valuable as that of a freeman in Massts., that as wealth was the great means of defence and utility to the Nation they are equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a Government which was instituted principally for the protection of property, and was itself to be supported by property.

Mr. Mason could not agree to the motion, notwithstanding it was favorable to Virga. because he thought it unjust. It was cer-

¹⁶ *Records of the Federal Convention*, pp. 575-576.

¹⁷ *Ibid.*, I, p. 579.

¹⁸ *Ibid.*, pp. 580-583.

tain that the slaves were valuable, as they raised the value of land, increased the exports & imports, and of course the revenue, would supply the means of feeding and supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of Representation. He could not, however, regard them as equal to freemen and could not vote for them as such. He added as worthy of remark, that the Southern States have this peculiar species of property over & above the other species of property common to all the States.

Mr. Williamson reminded Mr. Ghorum that if the Southn. States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States on the same occasion contended for their equality. He did (not) however either then or now, concur in either extreme, but approved of the ratio of 3/5.

On Mr. Butlers motion for considering blacks as equal to Whites in the apportionment for Representation

Massts. no. Cont. no. (N. Y. not on floor.) N. J. no. Pa. no. Del. ay. Md. No. (Va. no) N. C. no. S. C. ay. Geo. ay. (Ayes—3; noes—7.)

Mr. Govr. Morris said he had several objections to the proposition of Mr. Williamson. 1. It fettered the Legislature too much. 2. It would exclude some States altogether who would not have a sufficient number to entitle them to a single Representative. 3. It will not consist with the Resolution passed on Saturday last authorizing the Legislature to adjust the Representation from time to time on the principles of population & wealth or with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the sd Resolution would not be pursued: If as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers & wealth of different Countries, renderd all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth, yet the late defence made by G. Britain agst. her numerous enemies proved in the clearest manner, that it is entirely fallacious even in this respect.

Mr. King thought there was great force in the objections of Mr. Govr. Morris: he would however accede to the proposition for the sake of doing something.

Mr. Rutledge contended for the admission of wealth in the estimate by which Representation should be regulated. The Western States will not be able to contribute in proportion to their numbers, they shd. not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that "at the end of years after the 1st meeting of the Legislature, and of every years thereafter, the Legislature shall proportion the Representation according to the principles of wealth & population"

Mr. Sherman thought the number of people alone the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the Legislature; but he had been convinced by the observations of (Mr. Randolph & Mr. Mason) that the *periods* & the *rule* of revising the Representation ought to be fixt by the Constitution

Mr. Reid thought the Legislature ought not to be too much shackled. It would make the Constitution like Religious Creeds, embarrassing to those bound to conform to them & more likely to produce dissatisfaction and Scism, than harmony and union.

Mr. Mason objected to Mr. Rutledge motion, as requiring of the Legislature something too indefinite & impracticable, and leaving them a pretext for doing nothing.

Mr. Wilson had himself no objection to leaving the Legislature entirely at liberty. But considered wealth as an impracticable rule.

Mr. Ghorum. If the Convention who are comparatively so little biased by local views are so much perplexed, How can it be expected that the Legislature hereafter under the full biass of those views, will be able to settle a standard. He was convinced by the argument of others & his own reflections, that the Convention ought to fix some standard or other.

Mr. Govr. Morris. The argts. of others & his own reflections had led him to a very different conclusion. If we can't agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come. Surely those who come after us will judge better of things present, than we can of things future. He could not persuade himself that numbers would be a just rule at any time. * * * * * Another objection with him agst admit-

ting the blacks into the census, was that the people of Pena. would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised agst. leaving the adjustment of the Representation from time to time, to the discretion of the Legislature.¹⁹

The question of counting three-fifths of the Negroes as whites, however, would not down. According to Madison:

Mr. King. being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with Whites at all, would excite great discontents among the States having no slaves. He had never said as to any particular point that he would in no event acquiesce in & support it; but he wd. say that if in any case such a declaration was to be made by him, it would be in this. He remarked that in the (temporary) allotment of Representatives made by the Committee, the Southern States had received more than the number of their white & three fifths of their black inhabitants entitled them to.

Mr. Sherman. S. Carola. had not more beyond her proportion than N. York & N. Hampshire, nor either of them more than was necessary in order to avoid fractions or reducing them below their proportion. Georgia had more; but the rapid growth of that State seemed to justify it. In general the allotment might not be just, but considering all circumstances, he was satisfied with it.

Mr. Ghorum supported the propriety of establishing numbers as the rule. He said that in Massts. estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people; and it had been found even including Boston, that the most exact proportion prevailed between numbers and property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the people of the Eastern States. But he recollected that when the proposition of Congs for changing the 8th art. of Confedn. was before the Legislature of Massts. the only difficulty then was to satisfy them that the negroes ought not to have been counted equally with whites instead of being counted in the ratio of three fifths only.

Mr. Wilson did not well see on what principle the admission of

¹⁹ *Records of the Federal Convention*, I, pp. 580-583.

blacks in the proportion of three fifths could be explained. Are they admitted as Citizens? Then why are they not admitted on an equality with White Citizens? Are they admitted as property, then why is not other property admitted into the computation? These were difficulties however which he thought must be overruled by the necessity of compromise. He had some apprehensions also from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pena. as had been intimated by his colleagues (Mr. Govr. Morris). But he differed from him in thinking numbers of inhabts. so incorrect a measure of wealth. He had seen the Western settlemts. of Pa. and on a comparison of them with the City of Philada. could discover little other difference, than that property was more unequally divided among individuals here than there. Taking the same number in the aggregate in the two situations he believed there could be little difference in their wealth and ability to contribute to the public wants.

Mr. Govr. Morris was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States or to human nature, and he must therefore do it to the former. For he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes, and he did not believe those States would ever confederate on terms that would deprive them of that trade.

On question for agreeing to include $\frac{3}{5}$ of the blacks

Masts. no Cont. ay N. J. no. Pa. no Del. no. Mard. no Va. ay.
N. C. ay. S. C. no. Geo. ay (Ayes—6; noes—4.)²⁰

On the twelfth of July the following clause was proposed:

“Provided always that direct Taxation ought to be proportioned according to representation”

which passed unanimously in the affirmative.

It was moved and seconded to postpone the consideration of the first clause in the report from the first grand Committee

which passed in the affirmative.

It was moved and seconded to add the following amendment to the last clause adopted by the House namely

“and that the rule of contribution by direct taxation for the support of the government of the United States shall be the number of white inhabitants, and three fifths of every other description in

²⁰ *Records of the Federal Convention*, I, pp. 586–588.

the several States, until some other rule that shall more accurately ascertain the wealth of the several States can be devised and adopted by the Legislature²¹

On the motion of Mr. Randolph, the vote of saturday last (July 7) authorizing the Legislr. to adjust from time to time, the representation upon the principles of *Wealth* and numbers of inhabitants was (reconsidered by common consent in order to strike our "Wealth" and adjust the resolution to that requiring periodical revisions according to the number of whites & three fifths of the blacks: the motion was in the words following—"But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the U. S. be authorized from time to time to apportion the number of representatives: and in case any of the States shall hereafter be divided or any two or more States united or new States created within the limits of the U. S. shall hereafter be divided or any two or more States united or new States created within the limits of the U. S. the Legislature of U. S. shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants; according to the provisions hereafter mentioned.")

Mr. Govr. Morris opposed the alteration as leaving still an incoherence. If Negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhbt. they ought to be added in their entire number, and not in the proportion of 3/5. If as property, the word wealth was right, and striking it out would produce the very inconsistency which it was meant to get rid of.—The train of business & the late turn which it had taken, had led him he said, into deep meditation on it, and He wd. candidly state the result. A distinction had been set up & urged between the Nn. & Southn. States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees however that it is persisted in; and that the Southn. Gentleman will not be satisfied unless they see the way open to their gaining a majority in the public Councils. The consequence of such a transfer of power from the maritime to the interior & landed interests will he forsees be such an oppression of commerce, that he shall be obliged to vote for ye. vicious principle

²¹ *Records of the Federal Convention*, I, pp. 589–590.

of equality in the 2d. branch in order to provide for some defence for the N. States agst. it. But to come now more to the point, either this distinction is fictitious or real: if fictitious let it be dismissed & let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the Southn. States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the Middle States in point of policy to take; to join their Eastern brethren according to his ideas. If the Southn. States get the power into their hands, and be joined as they will be the interior Country they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior Country having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northn. & middle States will have agst. this danger. It has been said that N. C. S. C. and Georgia only will in a little time have a majority of the people of America. They must in that case include the great interior Country, and every thing was to be apprehended from their getting the power into their hands.²²

The Committee of Detail finally brought forward for the apportionment of direct taxes and representation in the House a plan for taking the Negroes into account.

(Direct Taxation shall always be in Proportion to Representation in the House of Representatives.)

The proportions of direct Taxation shall be regulated by the whole Number of white and other free Citizens and Inhabitants, of every Age, Sex and Condition, including those bound to Servitude for a Term of Years, and three fifths of all other Persons not comprehended in the foregoing Description; which Number shall, within the Term of every ten Years afterwards, be taken in such manner as the said Legislature shall direct.²³

This, as is shown below, is substantially what Rutledge as Chairman of the committee to report a constitution reported.

²² *Records of the Federal Convention*, pp. 603-605.

²³ *Ibid.*, II, p. 168.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct.²⁴

The same appears also in the report of the Committee on Style.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within three years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct.

(b). Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantation one, Connecticut five, New-York six, New-Jersey, four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five and Georgia three.²⁵

²⁴ *Records of the Federal Convention*, pp. 182-183.

²⁵ Dickenson thought that unless the number of representatives given the large States was reduced the smaller ones would be encouraged to import slaves.

What these framers said in explaining their intentions thereafter when discussing the constitution in ratifying conventions, legislatures and Congress, is further illuminating. Before the Maryland convention called to ratify the constitution Luther Martin said:

S: 2. Slaves ought never to be considered in Representation, because they are property. They afford a rule as such in Taxation; but are Citizens intrusted in the General Government, no more than Cattle, Horses, Mules or Asses: and a Gentleman in Debate very pertinently observed that he would as soon enter into Compacts, with the Asses Mules, or Horses of the Ancient Dominion as with their Slaves—When there is power to raise a revenue by direct Taxation, each State ought to pay an equal Ratio; Whereas by taxing Commerce some States pay greatly more than others,²⁷

Before the South Carolina House of Representatives C. C. Pinckney said:

We are at a loss, for some time, for a rule to ascertain the proportionate wealth of the states. At last we thought that the productive labor of the inhabitants was the best rule for ascertaining their wealth. In conformity to this rule, joined to a spirit of concession, we determined that representatives should be apportioned among the several states, by adding to the whole number of free persons three fifths of the slaves. We thus obtained a representation for our property; and I confess I did not expect that we had conceded too much to the Eastern States, when they allowed us a representation for a species of property which they have not among them.²⁸

In the New York Convention considering the ratification of the constitution, Hamilton said:

The first thing objected to is that clause which allows a representation for three fifths of the negroes. . . . The regulation com-

Art: VII. sect. 3. resumed.—Mr. Dickenson moved to postpone this in order to reconsider Art: Iv. sect. 4. and to *limit* the number of representatives to be allowed to the large States. Unless this were done the small States would be reduced to entire insignificancy, and encouragement given to the importation of slaves. *Records of the Federal Convention*, II, 356, 570, 590.

²⁸ *Ibid.*, III, p. 253.

²⁷ *Ibid.*, III., pp. 155–156.

plained of was one result of the spirit of accommodation which governed the Convention; and without this indulgence no union could possibly have been formed.²⁹

On July 24, 1788, in the North Carolina convention Davie said:

. . . The gentleman "does not wish to be represented with negroes." This, sir, is an unhappy species of population; but we cannot at present alter their situation. The Eastern States had great jealousies on this subject. They insisted that their cows and horses were equally entitled to representation; that the one was property as well as the other. It became our duty, on the other hand, to acquire as much weight as possible in the legislation of the Union; and, as the Northern States were more populous in whites, this only could be done by insisting that a certain proportion of our slaves should make a part of the computed population. It was attempted to form a rule of representation from a compound ratio of wealth and population; but, on consideration, it was found impracticable to determine the comparative value of lands and other property, in so extensive a territory, with any degree of accuracy; and population alone was adopted as the only practicable rule or criterion of representation. It was urged by the deputies of the Eastern States, that a representation would be unequal and burdensome—that, in a time of war, slaves rendered a country more vulnerable, while its defence devolved upon its free inhabitants. On the other hand, we insisted that, in time of peace, they contributed by their labor, to the general wealth, as well as other members of the community—that, as rational beings, they had a right of representation, and, in some instances, might be highly useful in war. On these principles the Eastern States gave the matter up, and consented to the regulation as it has been read. I hope these reasons will appear satisfactory. It is the same rule or principle which was proposed some years ago by Congress, and assented to by twelve of the States. . . .³⁰

In the House of Representatives in 1820 C. C. Pinckney of South Carolina said:

Among the reasons which have induced me to rise, one is to ex-

²⁹ *Records of the Federal Convention*, III, p. 333.

³⁰ *Ibid.*, III, pp. 342-343.

press my surprise. Surprise, did I say? I ought rather to have said, my extreme astonishment, at the assertion I heard made on both floors of Congress, that, in forming the Constitution of the United States, and particularly that part of it which respects the representation on this floor, the Northern and Eastern States, or, as they are now called, the non-slaveholding States, have made a great concession to the Southern in granting them a representation of three-fifths of their slaves; that they saw the concession was a very great and important one at the time, but that they had no idea it would so soon have proved itself of such consequence; that it would so soon have proved itself to be by far the most important concession that had been made. They say, that it was wrung from them by their affection to the Union, and their wish to preserve it from dissolution or disunion; that they had, for a long time, lamented they had made it; and that, if it was to do over, no earthly consideration should again tempt them to agree to so unequal and so ruinous a compromise. . . .

It was, sir, for the purpose of correcting this great and unpardonable error; unpardonable, because it is a wilful one, and the error of it is well known to the ablest of those who make it; of denying the assertion, and proving that the contrary is the fact, and that the concession, on that occasion, was from the Southern and the Northern States, that, among others, I have risen.

It is of the greatest consequence that the proof I am about to give should be laid before this nation; for, as the inequality of representation is the great ground on which the Northern and Eastern States have always, and now more particularly and forcibly than ever, raised all their complaints on this subject, if I can show and prove that they have not even a shadow of right to make pretences or complaints; that they are as fully represented as they ought to be; while, we, the Southern members, are unjustly deprived of any representation for a large and important part of our population, more valuable to the Union, as can be shown, than any equal number of inhabitants in the Northern and Eastern States, can, from their situation, climate, and productions, possibly be. If I can prove this, I think I shall be able to show most clearly the true motives which have given rise to this measure; to strip the thin, the cobweb veil from it, as well as the pretended ones of religion, humanity, and love of liberty; and to show, to use the soft terms the decorum of debate oblige me to use, the extreme want of modesty in those who are already as fully represented here as they can be, to go

the great lengths they do in endeavoring, by every effort in their power, public and private, to take from the Southern and Western States, which are already so greatly and unjustly deprived of an important part of the representation, a still greater share; to endeavor to establish the first precedent, which extreme rashness and temerity have ever presumed, that Congress has a right to touch the question and legislate on slavery; thereby shaking the property in them, in the Southern and Western States, to its very foundation, and making an attack which, if successful, must convince them that the Northern and Eastern States are their greatest enemies; that they are preparing measures for them which even Great Britain in the heat of the Revolutionary War, and when all her passions were roused by hatred and revenge to the highest pitch never ventured to inflict upon them. Instead of a course like this, they ought, in my judgment, sir, to be highly pleased with their present situation; that they are fully represented, while we have lost so great a share of our representation; they ought sir, to be highly pleased at the dexterity and management of their members in the Convention, who obtained for them this great advantage; and, above all, with the moderation and forbearance with which the Southern and Western States have always borne their many bitter provocations on this subject, and now bear the open, avowed, and, by many of the ablest men among them, undisguised attack on our most valuable rights and properties. . . .

Before I proceed to the other parts of this question, I have thus endeavored to give a new view of the subject of representation in this House; to show how much more the Eastern and Northern States are represented than the Southern and Western. . . .

The supporters of the amendment contend that Congress have the right to insist on the prevention of involuntary servitude in Missouri; and found the right on the ninth section of the first article, which says "the migration or importation of such persons as the States now existing may think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation not exceeding ten dollars."

In considering this article, I will detail, as far as at this distant period is possible, what was the intention of the Convention that formed the Constitution in this article. The intention was, to give Congress a power, after the year 1808, to prevent the importation of slaves either by land or water from other countries. The word

import, includes both, and applies wholly to slaves. Without this limitation Congress might have stopped it sooner under their general power to regulate commerce; and it was an agreed point, a solemnly understood compact, that, on the Southern States consenting to shut their ports against the importation of Africans, no power was to be delegated to Congress, nor were they ever to be authorized to touch the question of slavery; that the property of the Southern States in slaves was to be as sacredly preserved, and protected to them, as that of land, or any other kind of property in the Eastern States were to be to their citizens.

The term, or word, migration, applies wholly to free whites; in its Constitutional sense, as intended by the Convention, it means "voluntary change of servitude," from one country to another. The reasons of its being adopted and used in the Constitution, as far as I can recollect, were these; that the Constitution being a frame of government, consisting wholly of delegated powers, all power, not expressly delegated, being reserved to the people or the States, it was supposed, that, without some express grant to them of power on the subject, Congress would not be authorized ever to touch the question of migration hither, or emigration to this country, however pressing or urgent the necessity for such a measure might be; that they could derive no such power from the usages of nations, or even the laws of war; that the latter would only enable them to make prisoners of alien enemies, which would not be sufficient, as spies or other dangerous emigrants, who were not alien enemies, might enter the country for treasonable purposes, and do great injury; that, as all governments possessed this power, it was necessary to give it to our own, which could alone exercise it, and where, on other and much greater points, we had placed unlimited confidence; it was, therefore, agreed that, in the same article, the word migration should be placed; and that, from the year 1808, Congress should possess the complete power to stop either or both, as they might suppose the public interest required; the article, therefore, is a *negative pregnant*, restraining for twenty years, and giving the power after.

The reasons for restraining the power to prevent migration hither for twenty years, were, to the best of my recollections, these; That, as at this time, we had immense and almost immeasurable territory, peopled by not more than two millions and a half of inhabitants, it was of very great consequence to encourage the emigration of able, skilful, and industrious Europeans. The wise con-

duct of William Penn, and the unexampled growth of Pennsylvania, were cited. It was said, that the portals of the only temple of true freedom now existing on earth should be thrown open to all mankind; that all foreigners of industrious habits should be welcome, and none more so than men of science, and such as may bring to us arts we are unacquainted with, or the means of perfecting those in which we are not yet sufficiently skilled—capitalists whose wealth may add to our commerce or domestic improvements; let the door be ever and most affectionately open to illustrious exiles and sufferers in the cause of liberty; in short, open it liberally to science, to merit, and talents, wherever found, and receive and make them your own. That the safest mode would be to pursue the course for twenty years, and not, before that period, put it at all into the power of Congress to shut it; that, by that time, the Union would be so settled, and our population would be so much increased, we could proceed on our own stock, without the farther accession of foreigners; that as Congress were to be prohibited from stopping the importation of slaves to settle the Southern States, as no obstacles was to be thrown in the way of their increase and settlement for that period, let it be so with the Northern and Eastern, to which, particularly New York and Philadelphia it was expected most of the emigrants would go from Europe: and it so happened, for, previous to the year 1808, more than double as many Europeans emigrated to these States, as of Africans were imported into the Southern States.

Connecting the question of importing slaves with that of counting them to determine the representation in the national legislature, the framers engaged in a heated debate as to whether or not the Southern States would always have a majority in that body by encouraging the slave trade. Carolina and Georgia, however, stood firm for the right to import slaves.

On July 23 General Pinckney reminded the Convention that if the Committee should fail to insert some security to the Southern States agst. an emancipation of slaves, and taxes on exports, he shd. be bound by duty to his State to vote agst. their Report—The appt. of a Come. as moved by Mr. Gerry, Agd. to nem. con.³¹

³¹ *Records of the Federal Convention*, II, p. 95.

The Committee of Detail, therefore, reported:

2 no prohibitions or (such) (ye) Importations of such inhabitants (or people as the sevl. States think proper to admit)

No Tax or Duty shall be laid by the Legislature, on Articles exported from any State; nor on the emigration or importation of such Persons as the several States shall think proper to admit; nor shall such emigration or importation be prohibited.

No Capitation Tax shall be laid, unless in Proportion to the Census herein before directed to be taken.

The draft of the constitution reported on August 6 carried:³²

Sect. 4. No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

On the eighth of August, King remarked:³²

Mr. King wished to know what influence the vote just passed was meant have on the succeeding part of the Report, concerning the admission of slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Genl. Govt. and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all these hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited—exports could not be taxed. Is this reasonable? What are the great objects of the Genl. System? 1. defence agst. foreign invasion. 2 agst. internal sedition. Shall all the States then be bound to defend each; & shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the U. S. be bound to defend another part, and that other part be at liberty not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported shall

³² *Records of the Federal Convention*, p. 183.

not the exports produced by their labor, supply a revenue the better to enable the Genl. Govt. to defend their masters?—There was so much inequality & unreasonableness in all this, that the people of the N(orthern) States could never be reconciled (to it). No candid man could undertake to justify it to them. He had hoped that some accommodation wd. have taken place on this subject; that at least a time wd. have been limited for the importation of slaves. He never could agree to let them be imported without limitation & then be represented in the Natl. Legislature. Indeed he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr. Sherman regarded the slave-trade as iniquitous; but the point of representation having been settled after much difficulty & deliberation, he did not think himself bound to make opposition; especially as the present articles as amended did not preclude any arrangement whatever on that point in another place of the Report.

Mr. Govr. Morris moved to insert “ free ” before the word “ inhabitants.” Much he said would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution—It was the curse of heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich & noble cultivation marks the prosperity & happiness of the people, with the misery & poverty which overspread the barren wastes of Va. Maryd & the other States having slaves. (Travel thro’ ye whold Continent & you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave ye E Sts. & enter N. York, the effects of the institution become visible; Passing thro’ the Jerseys and entering Pa—every criterion of superior improvement witnesses the change. Proceed Southwdly, & every step you take thro’ ye great regions of slaves, presents a desert increasing with ye increasing proportion of these wretched beings.)

Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens & let them vote? Are they property? Why then is no other property included? The Houses in this City (Philada.) are worth more than all the wretched slaves which cover the rice swamps of South Carolina. The admission of slaves into the Representation when fairly explained comes to this: that inhabitant of Georgia and S.

C. who goes to the Coast of Africa and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & dam(n)s them to the most cruel bondages, shall have more votes in a Govt. instituted for protection of the rights of mankind, than the Citizens of Pa or N. Jersey who views with a laudable horror, so nefarious a practice. He would add that Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of Aristocracy. And What is the proposed compensation to the Northern States for a sacrifice of every principle of right, of every impulse of humanity. They are to bind themselves to march their militia for the defence of the S. States; for their defence agst those very slaves of whom they complain. They must supply vessels & seamen, in case of foreign Attack. The Legislature will have indefinite power to tax them by excises, and duties on imports; both of which will fall heavier on them than on the Southern inhabitants; for the bohea tea used by a Northern freeman, will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack, and the difficulty of defence; nay they are to be encouraged to it by an assurance of having their votes in the Natl Govt increased in proportion. and are at the same time to have their exports & their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the Genl Govt. can stretch its hand directly into the pockets of the people scattered over so vast a Country. They can only do it through the medium of exports imports & excises. For what then are all these sacrifices to be made? He would sooner submit himself to a tax for paying for all the Negroes in the U. States, than saddle posterity with such a Constitution.

Mr. Dayton 2ded. the motion. He did it he said that his sentiments on the subject might appear whatever might be the fate of the amendment.

Mr. Sherman. did not regard the admission of the Negroes into the ratio of representation, as liable to such insuperable objections. It was the freemen of the Southn. States who were in fact to be

represented according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter.

Mr. Pinkney, considered the fisheries & the Western frontier as more burdensome to the U. S. than the slaves— He thought this could be demonstrated if the occasion were a proper one.

Mr Wilson. thought the motion premature— An agreement to the clause would be no bar to the object of it.

Question On Motion to insert “free” before “inhabitants.”

N. H.—no. Mas. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. no. Va. no. S. C. no. N. C. no. Geo. no. (Ayes—1; noes—10.)³³

Luther Martin (some days thereafter), proposed to vary the sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves,

1. As five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause wd. leave an encouragement to this traffic.

2 slaves weakened one part of the Union which the other parts were bound to protect: the privilege of importing them was therefore unreasonable—

3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr Rutledge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from the (obligation to protect the Southern against them.).—

Religions & humanity had nothing to do with this question— Interest alone is the governing principle with Nations—The true question at present is whether the Southn. States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.

Mr. Ellsworth was for leaving the clause as it stands. let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves—What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not

³³ *Records of the Federal Convention*, II, pp. 220–221.

meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one:

Mr Pinkney. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly & watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject, S. Carolina may perhaps by degrees do of herself what is wished, as Virginia & Maryland have already done.³⁴

Adjourned

Art. VII sect 4. resumed. Mr. Sherman was for leaving the clause as it stands. He disapproved of the slave trade: yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it.³⁴ He observed that the abolition of slavery seemed to be going on in the U. S. & that the good sense of the several States would probably by degrees complete it. He urged on the Convention the necessity of despatch(ing its business.)

Col. Mason. This infernal traffic originated in the avarice of British Merchants. The British Govt. constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain if S. Carolina & Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands; and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia. Slavery discourages arts & manufactures. The poor despise labor when performed by slaves.

³⁴ *Records of the Federal Convention*, II, pp. 364-365.

They prevent the immigration of Whites, who really enrich & strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes & effects providence punishes national calamities. He lamented that some of our Eastern brethren had from a lust of gain embarked in this nefarious traffic. As to the States being in possession of the Right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view, that the Genl. Govt. should have power to prevent the increase of slavery.

Mr. Ellsworth. As he had never owned a slave could not judge of the effects of slavery on character. He said however that if it was to be considered in a moral light we ought to go farther and free those already in the Country.—As slaves also multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards S. Carolina & Georgia—Let us not intermeddle. As population increases; poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already taken place in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrection from foreign influence, that will become a motive to kind treatment of the slaves.

Mr. Pinkney— If slavery be wrong, it is justified by the example of the world. He cited the case of Greece Rome & other ancient States; the sanction given by France, England, Holland & other modern States. In all ages one half of mankind have been slaves. If the S. States were let alone they will probably of themselves stop importations. He wd. himself as a Citizen of S. Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution which he wished to see adopted.

General Pinkney declared it to be his firm opinion that if himself & all his colleagues were to sign the Constitution & use their personal influence, it would be of no avail towards obtaining the assent of their Constituents. S. Carolina & Georgia cannot do without slaves. As to Virginia she will gain by stopping the im-

portations. Her slaves will rise in value, & she has more than she wants. It would be unequal to require S. C. & Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to S. Carolina as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also, and the more of this, the more of revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection of the clause as an exclusion of S. Carola from the Union.

Mr. Baldwin had conceived national object alone to be before the Convention, not such as like the present were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a Genl Government to be the pursuit of the central States who wished to have a vortex for every thing—that her distance would preclude her from equal advantage—and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

Mr. Wilson observed that if S. C. & Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to unite because the importation might be prohibited. As the Section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Mr. Gerry thought we had nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it.

Mr. Dickinson considered it as inadmissible on every principle of honor & safety that the importation of slaves should be authorized to the States by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Govt. not to the States particularly interested. If Engd. & France permit slavery, slaves are at the same time excluded from both those

kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southn. States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the Genl. Government.

Mr Williamson stated the law of N. Carolina on the subject, to wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5. on each slave imported from Africa. £10. on each from elsewhere, & £50 on each from a State licensing manumission. He thought the S. States could not be members of the Union if the clause should be rejected, and that it was wrong to force any thing down, not absolutely necessary, and which any State must disagree to.

Mr. King thought the subject should be considered in a political light only. If two States will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great & equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northn. & middle States.

Mr. Langdon was strenuous for giving the power to the Genl Govt. He cd. not with a good conscience leave it with the States who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

Genl. Pinkney thought himself bound to declare candidly that he did not think S. Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he thought right & wh. wd. remove one difficulty that had been started.

Mr. Rutledge. If the Convention thinks that N. C.; S. C. & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest. He was strenuous agst. striking out the Section, and seconded the motion of Genl. Pinkney for a commitment.

Mr. Govr. Morris wished the whole subject to be committed including the clauses relating to taxes on exports & to a navigation act. These things may form a bargain among the Northern & Southern States.

Mr. Butler declared that he never would agree to the power of taxing exports.

Mr. Sherman said it was better to let the S. States import slaves than to part with them, if they made that a *sine qua non*. He was opposed to a tax on slaves imported as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the Genl. Government that it would be exercised. He thought it would be its duty to exercise the power.

Mr. Read was for the commitment provided the clause concerning taxes on exports should also be committed.

Mr. Sherman observed that that clause had been agreed to & therefore could not be committed.

Mr. Randolph was for committing in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He wd. sooner risk the constitution—He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the State having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sect. 4 & 5. of art: 7. N. H. no. Mas. abst. Cont. ay N. J. ay Pa. no. Del. no Maryd ay. Va ay. N. C. ay S. C. ay. Geo. ay. Geo. ay. (Ayes—7; noes—3; absent—1.)

Mr. Pinkney & Mr. Langdon moved to commit sect. 6. as to navigation act (by two thirds of each House.)

Mr. Gorham did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered that the Eastern States had no motive to Union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the Southn. States.

Mr. Wilson wished for a commitment in order to reduce the proportion of votes required.

Mr. Ellsworth was for taking the plan as it is. This widening of opinions has a threatening aspect. If we do not agree on this middle & moderate ground he was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes & directions, and most probably into several confederations and not without bloodshed.

On Question for committing 6 sect. as to navigation Act to a member from each State—N. H. ay—Mas. ay. Ct. no. N. J. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. (Ayes—9; noes—2;)³⁵

McHenry has the following note on slavery for the twenty-second of August:

Committed the remainder of the 4 sect. with the 5 and 6.

The 4 sect promising the importation of Slaves gave rise to much desultory debate.

Every 5 slaves counted in representation as one elector without being equal in point of strength to one *white* inhabitant.

This gave the slave States an advantage in representation over the others.

The slaves were moreover exempt from duty on importation.

They served to render the representation from such States aristocratical.

It was replied—That the population or increase of slaves in Virginia exceeded their calls for their services—That a prohibition of Slaves into S. Carolina Georgia etc—would be a monopoly in their favor. These States could not do without Slaves—Virginia etc would make their own terms for such as they might sell.

Such was the situation of the country that it could not exist without slaves—That they could confederate on no other condition.

They had enjoyed the right of importing slaves when colonies.

They enjoyed it as States under the confederation—And if they could not enjoy it under the proposed government, they could not associate or make a part of it.

Several additions were reported by the Committee.³⁶

Upon taking up the Report of the Committee of Eleven on the twenty-fifth of August

Genl Pinkney moved to strike out the words “ the year eighteen hundred ” (as the year limiting the importation of slaves,) and to insert the words “ the year eighteen hundred and eight ”

Mr. Ghorum 2ded the motion

Mr. Madison. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a

³⁵ *Records of the Federal Convention*, II, pp. 369–375.

³⁶ *Ibid.*, II, p. 378.

term will be more dishonorable to the National character than to say nothing about it in the Constitution.

On the motion; (which passed in the affirmative.)

N—H ay. Mas. ay— Ct. ay. N. J. no. Pa. no Del—no. Md. ay. Va. no. N—C. ay. S—C. ay. Geo. ay. (Ayes—7; noes—4.)

Mr. Govr. Morris was for making the clause read at once, "importation of slaves into N. Carolina, S—Carolina & Georgia." (shall not be prohibited &c.) This he said would be most fair and would avoid the abiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known also that this part of the Constitution was a compliance with those States. If the change of language however should be objected to by the members from those States, he should not urge it.

Col: Mason was not against using the term "slaves" but agst naming N—C—S—C. & Georgia, lest it should give offence to the people of those States.

Mr Sherman liked a description better than the terms proposed, which had been declined by the old Congs & were not pleasing to some people. Mr. Clymer concurred with Mr. Sherman.

Mr. Williamson said that both in opinion & practice he was, against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in S—C & Georgia on those terms, than to exclude them from the Union—

Mr. Govr. Morris withdrew his motion.

Mr. Dickenson wished the clause to be confined to the States which had not themselves prohibited the importation of slaves, and for that purpose moved to amend the clause so as to read "The importation of slaves into such of the States as shall permit the same shall not be prohibited by the Legislature of the U—S— until the year 1808"—which was agreed to nem: cont:

The first part of the report was then agreed to, amended as follows. "The migration or importation of such persons as the several States now existing shall think proper to admit shall not be prohibited by the Legislature prior to the year 1808." N. H. Mas. Con. Md. N. C. S. C: Geo: . . . ay N. J. Pa. Del Virga . . . no. (Ayes—7; noes—4).

Mr. Baldwin in order to restrain & more explicitly define "the average duty" moved to strike out of the 2d. part the words "average of the duties laid on imports" and insert "common impost on articles not enumerated" which was agreed to nem: cont:

Mr. Sherman was agst. this 2d part, as acknowledging men to be property, by taxing them as such under the character of slaves,

Mr. King & Mr. Langdon considered this as the price of the 1st part.

Genl. Pinkney admitted that it was so.

Col. Mason. Not to tax, will be equivalent to a bounty on the importation of slaves.

Mr. Ghorum thought that Mr. Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

Mr. Govr, Morris remarked that as the clause now stands it implies that the Legislature may tax freemen imported.

Mr. Sherman in answer to Mr. Ghorum observed that the smallness of the duty shewed revenue to be the object, not the discouragement of the importation.

Mr. Madison thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not like merchandise, consumed &c.

Col. Mason (in answr. to Govr. Morris) the provision as it stands was necessary for the case of Convicts in order to prevent the introduction of them.

It was finally agreed nem: contrad: to make the clause read "but a tax or duty may be imposed on such importation not exceeding ten dollars for each person", and then the 2d. part as amended was agreed to.

Sect 5—art—VII was agreed to nem: con: as reported.

Sect 6. art. VII. in the Report was, postponed.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.³⁷

James McHenry said before the Maryland House of Delegates in November 29, 1787:

Conventions were anxious to procure a perpetual decree against the importation of Slaves; but the Southern States could not be brought to consent to it—All that could possible be obtained was a temporary regulation which the Congress may vary hereafter.³⁸

³⁷ *Records of the Federal Convention*, II, pp. 415–417.

³⁸ *Maryland Historical Magazine*, December, 1909.

In 1787 James Wilson said before the Convention called in Pennsylvania to ratify the constitution:

With respect to the clause restricting Congress from prohibiting the migration or importation of such persons as any of the States now existing shall think proper to admit, prior to the year 1808, the honorable gentleman says that this clause is not only dark, but intended to grant to Congress, for that time, the power to admit the importation of slaves. No such thing was intended; but I will tell you what was done, and it gives me high pleasure that so much was done. Under the present confederation, the States may admit the importation of the slaves as long as they please; but by this article, after the year 1808, the Congress will have power to prohibit such importation, notwithstanding the disposition of any State to the contrary. I consider this as laying the foundation for banishing slavery out of this country; and though the period is more distant than I could wish, yet it will produce the same kind, gradual change which was pursued in Pennsylvania. It is with much satisfaction I view this power in the general government, where by they may lay an interdiction on this reproachful trade. But an immediate advantage is also obtained for a tax or duty may be imposed on such importation not exceeding ten dollars for each person; and this, Sir, operates as a partial prohibition. It was all that could be obtained. I am sorry it was no more; but from this I think there is reason to hope that yet a few years, and it will be prohibited altogether. And in the meantime, the new States which are to be formed will be under the control of Congress in this particular, and slaves will never be introduced amongst them. The gentleman says that it is unfortunate in another point of view: it means to prohibit the introduction of white people from Europe, as this may deter them from coming amongst us. A little impartiality and attention will discover the care that the convention took in selecting their language. The words are, the *migration or IMPORTATION* of such persons, etc., shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such *IMPORTATION*. It is observable here that the term migration is dropped when a tax or duty is mentioned, so that Congress have power to impose the tax only on those imported.³⁹

Referring to George Mason's objections to the Constitution, Oliver Ellsworth said:

³⁹ McMaster and Stone, *Pennsylvania and the Federal Constitution*, pp. 311-313.

*The general Legislature is restrained from prohibiting the further importation of slaves for twenty odd years. . . . His objections are . . . that such importations render the United States weaker, more vulnerable, and less capable of defence. To this I readily agree, and all good men wish the entire abolition of slavery, as soon as it can take place with safety to the public, and for the lasting good of the present wretched race of slaves. The only possible step that could be taken towards it by the convention was to fix a period after which they should not be imported.*⁴⁰

In his "Genuine Information" delivered before the Maryland Legislature November 29, 1787, Luther Martin said:

(56) By the *ninth* section of this article, the importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited prior to the year one thousand eight hundred and eight; but a duty may be imposed on such importation, not exceeding ten dollars for each person.

(57) The design of this clause is to prevent the general government from prohibiting the importation of slaves; but the same reasons which caused them to strike out the word "*national*," and not admit the word "*stamps*," influenced them here to guard against the word "*slaves*." They anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those *things* which the *expressions* signified. And hence it is, that the clause is so worded, as really to authorize the general government to impose a duty of ten dollars on every foreigner who comes into a State to become a citizen, whether he comes *absolutely* free, or *qualifiedly* so, as a servant; although this is contrary to the design of the framers, and the duty was only meant to extend to the importation of *slaves*.

(58) This clause was the subject of a great diversity of sentiment in the convention. As the system was reported by the committee of detail, the provision was general, that such importation should not be prohibited, without confining it to any particular period. This was rejected by eight States,—Georgia, South Carolina, and I think North Carolina, voting for it.

(59) We were then told by the delegates of the two first of

⁴⁰ P. L. Ford, *Essay on the Convention*, pp. 161–166.

those States, that their States would never agree to a *system*, which put in it the power of the general government to prevent the importation of slaves, and that they, as delegates from those States, must withhold their assent from such a system.

(60) A committee of one member from each State was chosen by ballot, to take this part of the system under their consideration, and to endeavor to agree upon some report, which should reconcile those States. To this committee also was referred the following proposition, which had been reported by the committee of detail, to wit; "No *navigation* act shall be passed without the assent of *two thirds* of the members present in each House;" a proposition which the *staple* and *commercial States* were solicitous to *retain*, lest their *commerce* should be placed too much under the power of the *eastern States*; but which these last States were as anxious to *reject*. This committee, of which also I had the honor to be a member, met and took under their consideration the subjects committed to them. I found the *eastern States*, notwithstanding their *aversion to slavery*, were very willing to indulge the southern States, at least with a temporary liberty to prosecute the *slave-trade*, provided the southern States would, in their turn, gratify them, by laying *no restrictions on navigation acts*; and after a very little time the committee, by a great majority agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted.

(61) This report was adopted by a majority of the convention but not without considerable opposition. It was said, that we had just assumed a place among independent nations, in consequence of our opposition to the attempts of Great Britain to *enslave us*; that this opposition was grounded upon the preservation of *those rights* to which God and nature had entitled *us*, not in *particular*, but in *common with all the rest of mankind*; that we had *appealed* to the *Supreme Being* for his *assistance*, as the *God of freedom*, who could not but *approve* our efforts to preserve the *rights* which he had thus *imparted to his creatures*; that, now, when we scarcely had risen from our *knees*, from *supplicating* his *aid* and *protection*, in *forming our government* over a *free people*, a government formed pretendedly on the *principles of liberty* and for *its preservation*,—in *that government*, to have a provision not only putting it out of *its power to restrain* and *prevent the slave-trade*, but *even encouraging that most infamous traffic*, by giving the *States power and influence*

in the *Union*, in *proportion* as *cruelly and wantonly sport with the rights of their fellow creatures*, ought to be considered as a *solemn mockery*, of an *insult to that God* whose protection we had then implored, and could not fail to hold us up in *detestation*, and render us *contemptible* to every *true friend* of liberty in the world. It was said, it ought to be considered that *national crimes* can only be, and *frequently are punished* in this world, by national punishments; and that the *continuance* of the slave-trade, and thus giving it a *national sanction and encouragement*, ought to be considered as *justly exposing* us to the *displeasure and vengeance* of *Him*, who is equally Lord of all, and who views with equal eye the poor *African slave* and his *American master*.

(62) It was urged, that, by this system, we were giving the general government full and absolute power, to regulate commerce, under which general power it would have a right to *restrain*, or *totally prohibit*, the *slave-trade*; it must, therefore, appear to the world absurd and disgraceful to the last degree, that we should *except* from the exercise of that power, the *only branch* of commerce which is *unjustifiable in its nature*, and *contrary* to the rights of *mankind*; that, on the contrary, we ought *rather to prohibit expressly* in our constitution, the *further importation of slaves*; and to *authorize* the general government, from time to time, to make such regulations as should be thought most advantageous for the *gradual abolition of slavery*, and the *emancipation* of the *slaves* which are already in the States: That *slavery* is *inconsistent* with the *genius of republicanism*, and has a tendency to *destroy* those *principles* on which it is *supported*, as it *lessens* the *sense* of the *equal rights of mankind*, and habituates us to *tyranny and oppression*.

(63) It was further urged that, by this system of government, every State is to be protected both from *foreign invasion* and from *domestic insurrections*; that, from this consideration, it was of the *utmost importance* it should have a power to restrain the importation of slaves; since in *proportion* as the number of slaves are increased in any State, in the *same* proportion the State is *weakened*, and *exposed* to foreign invasion or domestic insurrection, and *by so much less* will it be able to protect itself against *either*; and, therefore will by so much the more want aid from, and be a burden to the Union. It was further said, that as, in this system, we were giving the general government a power under the idea of national character, or national interest, to regulate even our *weights* and

measures, and have prohibited all possibility of *emitting paper money*, and *passing instalment laws*, &c., it must appear still more extraordinary, that we should prohibit the government from interfering with the slave-trade than which, *nothing* could so *materially affect* both our *national honor* and *interest*. These reasons influenced me, both on the committee and in convention, most decidedly to oppose and vote against the clause as it now makes a part of the system.

(64). You will perceive, Sir, not only that the general government is prohibited from interfering in the slave-trade *before* the year eighteen hundred and eight, but that there is no provision in the constitution that it shall *afterwards* be prohibited, nor any security that such prohibition will ever take place; and I think there is great reason to believe, that, if the importation of slaves is permitted until the year eighteen hundred and eight, it will not be prohibited afterwards. At *this time*, we do not generally hold this commerce in so great *abhorrence* as we have done. When our *own* liberties were at stake, we *warmly* felt for the *common rights of men*. The danger being thought to be past, which threatened ourselves, we are daily growing *more insensible* to those rights. In those States which have restrained or prohibited the importation of slaves, it is only done by legislative acts, which may be repealed. When those States find, that they must, in their *national character* and *connexion*, suffer in the *disgrace*, and share in the *inconveniences* attendant upon that detestable and iniquitous traffic, they may be desirous also to share in the *benefits* arising from it; and the odium attending it will be greatly effaced by the sanction which is given to it in the general government.⁴¹

In Elliot's Debates we find the following accredited to General Pinckney.

. . . The general then said he would make a few observations on the objections which the gentleman had thrown out on the restrictions that might be laid on the African trade after the year 1808. On this point your delegates had to contend with the religious and political prejudices of the Eastern and Middle States, and with the interested and inconsistent opinion of Virginia, who was warmly opposed to our importing more slaves. I am of the same opinion now as I was two years ago, when I used the expres-

⁴¹ *Records of the Federal Convention*, III, pp. 210-213.

sions the gentleman has quoted—that, while there remained one acre of swampland uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am so thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste.

You have so frequently heard my sentiments on this subject that I need not now repeat them. It was alleged, by some of the members who opposed an unlimited importation, that slaves increased the weakness of any state who admitted them; that they were a dangerous species of property, which an invading enemy could easily turn against ourselves and the neighboring states; and that, as we were allowed a representation for them in the House of Representatives, our influence in government would be increased in proportion as we were less able to defend ourselves. “Show some period,” said the members from the Eastern States, “when it may be in our power to put a stop, if we please, to the importation of this weakness, and we will endeavor, for your convenience, to restrain the religious and political prejudices of our people on this subject.” The Middle States and Virginia made us no such proposition; they were for an immediate and total prohibition. We endeavored to obviate the objections that were made in the best manner we could, and assigned reasons for our insisting on the importation, which there is no occasion to repeat, as they must occur to every gentleman in the house; a committee of the states was appointed in order to accommodate this matter, and, after a great deal of difficulty, it was settled on the footing recited in the Constitution.

By this settlement we have secured an unlimited importation of negroes for twenty years. Nor is it declared that the importation shall be then stopped; it may be continued. We have a security that the general government can never emancipate them, for no such authority is granted; and it is admitted, on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have

made better if we could; but, on the whole, I do not think them bad.⁴²

Mr. Madison said in the Virginia ratifying Convention, June 17, 1787:

Mr. Chairman—I should conceive this clause to be impolitic, if it were one of those things which could be excluded without encountering greater evils.—The southern states would not have entered into the union of America, without the temporary permission of that trade. And if they were excluded from the union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The union in general is not in a worse situation. Under the articles of confederation, it might be continued forever: But by this clause an end may be put to it after twenty years. There is therefore an amelioration of our circumstances. A tax may be laid in the mean time; but it is limited, otherwise congress might lay such a tax on slaves as will amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to any of those states where slaves are free, he becomes emancipated by their laws. For the laws of the states are uncharitable to one another in this respect. But in this constitution, “no person held to service, or labor, in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.”—This clause was expressly inserted to enable owners of slaves to reclaim them. This is a better security than any that now exists. No power is given to the general government to interpose with respect to the property in slaves now held by the states. The taxation of this state being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period they can. The gentlemen from South-Carolina and Georgia argued in this manner:—“We have now liberty to import this species of property, and much of the property now possessed has been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value,

⁴² Elliot, *Debates*, IV, pp. 277–286.

and we would be obliged to go to your markets." I need not expatiate on this subject. Great as the evil is, a dismemberment of the union would be worse. If those states should disunite from the other states, for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers. . . .

(*The 2d, 3d, and 4th clauses read.*)

. . . Mr. *Madison* replied, that even the southern states, who were most affected, were perfectly satisfied with this provision, and dreaded no danger to the property they now hold. It appeared to him, that the general government would not intermeddle with that property for twenty years, but to lay a tax on every slave imported, not exceeding ten dollars; and that after the expiration of that period they may prohibit the traffic altogether. The census in the constitution was intended to introduce equality in the burdens to be laid on the community.—No gentleman objected to laying duties, imposts, and exercises, uniformly. But uniformity of taxes would be subversive of the principles of equality: For that it was not possible to select any article which would be easy for one state, but what would be heavy for another.—. . .⁴³

In 1789 *Madison* said:

I conceive the constitution, in this particular, was formed in order that the Government, whilst it was restrained from laying a total prohibition, might be able to give some testimony of the sense of America with respect to the African trade. We have liberty to impose a tax or duty upon the importation of such persons, as any of the States now existing shall think proper to admit; and this liberty was granted, I presume, upon two considerations: The first was, that until the time arrived when they might abolish the importation of slaves, they might have an opportunity of evidencing their sentiments on the policy and humanity of such a trade. The other was, that they might be taxed in due proportion with other articles imported; for if the possessor will consider them as property, of course they are of value, and ought to be paid for.⁴⁴

According to *Elliot*, *Spaight* said on July 26, 1787:

Mr. *Spaight* answered, that there was a contest between the Northern and Southern States; that the Southern States, whose

⁴³ *Robertson, Debates of the Convention of Virginia*, pp. 321-345.

⁴⁴ *Annals of Congress*, 1st session, I, pp. 339-340.

principal support depended on the labor of slaves, would not consent to the desire of the Northern States to exclude the importation of slaves absolutely; that South Carolina and Georgia insisted on this clause, as they were now in want of hands to cultivate their lands; that in the course of twenty years they would be fully supplied; that the trade would be abolished then, and that, in the mean time, some tax or duty might be laid on. . . .

Mr. Spaight further explained the clause. That the limitation of this trade to the term of twenty years was a compromise between the Eastern States and the Southern States. South Carolina and Georgia wished to extend the term. The Eastern States insisted on the entire abolition of the trade. That the state of North Carolina had not thought proper to pass any law prohibiting the importation of slaves, and therefore its delegation in the Convention did not think themselves authorized to contend for an immediate prohibition of it. . . .⁴⁵

In the House of Representatives on February 12, 1790:

Mr. Baldwin was sorry the subject had ever been brought before Congress, because it was of a delicate nature as it respected some of the States. Gentlemen who had been present at the formation of the Constitution could not avoid the recollection of the pain and difficulty which the subject caused in that body. The members from the Southern States were so tender upon this point, that they had well nigh broken up without coming to any determination; however, from the extreme desire of preserving the Union, and obtaining an efficient Government, they were induced mutually to concede, and the Constitution jealously guarded what they agreed to. If gentlemen look over the footsteps of that body, they will find the greatest degree of caution used to imprint them, so as not to be easily eradicated; but the moment we go to jostle on that ground, I fear we shall feel it tremble under our feet. Congress have no power to interfere with the importation of slaves beyond what is given in the ninth section of the 1st article of the Constitution; everything else is interdicted to them in the strongest terms. If we examine the constitution, we shall find the expressions relative to this subject cautiously expressed, and more punctiliously guarded than any other part, "The migration or importation of such persons shall not be prohibited by Congress." But lest this should not have secured the object sufficiently, it is declared, in the

⁴⁵ Elliot, *Debates*, IX, pp. 72-104.

same section, "That no capitation or direct tax shall be laid, unless in proportion to the census;" this was intended to prevent Congress from laying any special tax upon negro slaves, as they might, in this way, so burthen the possessors of them as to induce a general emancipation. If we go on to the fifth article, we shall find the first and fifth clauses of the ninth section of the first article restrained from being altered before the year 1808.⁴⁶

According to George Mason's Account:

The constn as agreed to till a fortnight before the convention rose was such a one as he wd have set his hand & heart to. . . . with respect to the importn of slaves it was left to Congress. this disturbed the 2 Souther-most states who knew that Congress would immediately suppress the importn of slaves. those 2 states therefore struck up a bargain with the 3. N. Engld. states, if they would join to admit slaves for some years, the 2 Southernmost states wd join in changing the clause which required $\frac{2}{3}$ of the legislature in any vote. It was done. these articles were changed accordingly, & from that moment the two S. states and the 3 Northern ones joined Pen. Jers. & Del. & made the majority 8. to 3. against us instead of 8. to 3. for us as it had been thro' the whole Convention. under this coalition the great principles of the Constn were changed in the last days of the Convention.⁴⁷

The following debate on this subject took place in the House of Representatives, June 16-20, 1798:

Mr. B(aldwin). thought the 9th section, forbidding Congress to prohibit the migration, &c., was directly opposed to the principles of this bill. He recollected very well that when the 9th section of the Constitution was under consideration in the Convention, the delegates from some of the Southern States insisted that the prohibition of the introduction of slaves should be left to the State Governments; it was found expedient to make this provision in the Constitution; there was an objection to the use of the word slaves, as Congress by none of their acts had ever acknowledged the existence of such a condition. It was at length settled on the words as they now stand, "that the migration or importation of such persons as the several States shall think proper to admit, should not be prohibited till the year 1808." It was observed by some gentlemen

⁴⁶ *Annals of Congress*, 1st session, II, pp. 1200-1201.

⁴⁷ *Records of the Federal Convention*, III, p. 367.

present that this expression would extend to other persons besides slaves, which was not denied, but this did not produce any alteration of it. . . .

Mr. Dayton (the Speaker) commenced his observations with declaring that he should not have risen on this occasion, if no allusion had been made to the proceedings in the Federal Convention which framed the Constitution of the United States, or if the representation which was given of what passed in that body, had been a perfectly correct and candid one. He expressed his surprise at what had fallen from the gentleman from Georgia (Mr. Baldwin) relatively to that part of the Constitution, which had been selected as the text of opposition to the bill under consideration, viz: "The migration "or importation of such persons as any of the States now existing 'shall think proper to admit, shall not be prohibited by Congress, 'prior to the year 1808.'" He could only ascribe either to absolute forgetfulness, or to willful misrepresentation, the assertion of the member from Georgia, that it was understood and intended by the General Convention that the article in question should extend to the importation or introduction of citizens from foreign countries. As that gentleman and himself were the only two members of the House of Representatives who had the honor of a seat in that body, he deemed it his indispensable duty to correct the misstatement that had thus been made. He did not therefore, hesitate to say, in direct contradiction to this novel construction of the article (made as it would seem to suit the particular purposes of the opponents of the Alien bill) that the proposition itself was originally drawn up and moved in the Convention, by the deputies from South Carolina, for the express purpose of preventing Congress from interfering with the introduction of slaves into the United States, within the time specified. He recollected also, that in the discussion of its merits no question arose, or was agitated respecting the admission of foreigners but, on the contrary, that it was confined simply to slaves, and was first voted upon and carried with that word expressed in it, which was afterwards upon reconsideration changed for '*such persons*,' as it now stands, upon the suggestion of one of the Deputies from Connecticut. The sole reason assigned for changing it was, that it would be better not to stain the Constitutional code with such a term, since it could be avoided by the introduction of other equally intelligible words, as had been done in the former part of the same instrument, where the same sense was conveyed by the circuitous expression

of 'three fifths of all other persons.' Mr. Dayton said that at that time he was far from believing, and that indeed until the present debate arose, he had never heard, that any one member supposed that the simple change of the term would enlarge the construction of this prohibitory provision, as it was now contended for. If it could have been conceived to be really liable to such interpretation, he was convinced that it would not have been adopted, for it would then carry with it a strong injunction upon Congress to prohibit the introduction of foreigners into newly erected States immediately, and into the then existing States after the year 1808, as it undoubtedly does, that of slaves after that period. . . .

Mr. Baldwin . . . observed that he was yesterday obliged to leave the House a little before adjournment, and he had understood that, in his absence, the remarks which he had made on that point a few days ago, in Committee of the Whole, had been controverted, and that it had been done with some degree of harshness and personal disrespect. What he had before asserted was, that the clause respecting migration and importation was not considered at the time when it passed in the Convention as confined entirely to the subject of slaves. He spoke with the more confidence on this point, as there was scarcely one to which his attention had been so particularly called at the time. In making the Federal Constitution, when it was determined that it should be a Government possessing Legislative powers, the delegates from the two Southern States, of which he was one, were so fully persuaded that those powers would be used to the destruction of their property in slaves, that for some time they thought it would not be possible for them to be members of it: to that interesting state of the subject he had before alluded. In the progress of the business, other obstacles occurring, which he need not repeat, it was concluded to give to the delegates of those States the offer of preparing a clause to their own minds, to secure that species of property. He well remembered that when the clause was first prepared, it differed in two respects from the form in which it now stands. It used the word "slaves instead of "migration", or "importation," or persons, and instead of "ten dollars," it was expressed "five percent ad valorem on their importation," which it was supposed would be about the average rate of duties under this Government. Several persons had objections to the use of the word "slaves, as Congress had hitherto avoided the use of it in their acts, and not acknowledged the existence of such a condition. It was expressly observed at

the time, that making use of the form of expression as it now stands, instead of the word slaves, would make the meaning more general, and include what we now consider as included; this did not appear to be denied, but still it was preferred in its present form. He had more confidence than common in his recollection on this point, for the reasons which he had before stated. He gave it as the result of his very clear recollection. Any other member of that body was doubtless at liberty to say he did not recollect it. Still that would not diminish the confidence he felt on this occasion. . . .⁴⁸

In a letter to Robert Walsh November 27, 1817, Madison said:

Your letter of the 11th was duly read, and I should have given it a less tardy answer, but for a succession of particular demands on my attention, and a wish to assist my recollections, by consulting both manuscript & printed sources of information on the subjects of your enquiry. Of these, however, I have not been able to avail myself, but very partially.

As to the intention of the framers of the Constitution in the clause relating to "the migration and importation of persons &c" the best key may perhaps be found in the case which produced it. The African trade in slaves had long been odious to most of the States, and the importation of slaves into them had been prohibited. Particular States however continued the importation, and were extremely adverse to any restriction on their power to do so. In the Convention the former States were anxious, in framing a new constitution, to insert a provision for an immediate and absolute stop to the trade. The latter were not only averse to any interference on the subject; but solemnly declared that their constituents would never accede to a constitution containing such an article. Out of this conflict grew the middle measure providing that Congress should not interfere until the year 1808; with an implication, that after that date, they might prohibit the importation of slaves into the States then existing, & previous thereto, into the States not then existing. Such was the tone of opposition in the States of S. Carolina & Georgia, & such the desire to gain their acquiescence in a prohibitory power, that on a question between the epochs of 1800 & 1808, the States of N. Hampshire, Massatts, & Connecticut, (all the eastern States in the convention); joined in the vote for the

⁴⁸ *Annals of Congress*, Fifth Cong., 2d Session, II, pp. 1660, 1968-2005.

latter, influenced by the collateral motive of reconciling those particular States to the power over commerce & navigation; against which they felt, as did some other States, a very strong repugnance. The earnestness of S. Carolina & Georgia was further manifested by their insisting on the security in the V. article against any amendment to the Constitution affecting the right reserved to them, & their uniting with the small states who insisted on a like security for their equality in the Senate.

But some of the States were not only anxious for a constitutional provision against the introduction of Slaves. They had scruples against admitting the term "Slaves" into the Instrument. Hence the descriptive phrase "migration or importation of persons"; the term migration allowing those who were scrupulous of acknowledging expressly a property in human beings, to view *imported* persons as a species of emigrants, whilst others might apply the term to foreign malefactors sent or coming into the country. It is possible tho' not recollected, that some might have had an eye to the case of freed blacks, as well as malefactors.

But whatever may have been intended by the term "migration" or the term "persons", it is most certain, that they referred, exclusively, to a migration or importation from other countries into the U. States; and not to a removal, voluntary or involuntary, of Slaves or freemen, from one to another part of the U. States. Nothing appears or is recollected that warrants this latter intention. Nothing in the proceedings of the State conventions indicate such a construction there. Had such been in the construction it is easy to imagine the figure it would have made in many of the states, among the objections to the constitution, and among the numerous amendments to it proposed by the state conventions, not one of which amendments refers to the clause in question. . . . It falls within the scope of your enquiry, to state the fact, that there was a proposition in the convention, to discriminate between the old and new States, by an article in the Constitution declaring that the aggregate number of representatives from the states thereafter to be admitted, should never exceed that of the states originally adopting the Constitution. The proposition happily was rejected. The effect of such a discrimination, is sufficiently evident.⁴⁹

Speaking about the meaning of migration, Walter Lowrie of Pennsylvania said in the United States Senate:

⁴⁹ *Documentary History of the Constitution*, V, pp. 303-306.

In the Constitution it is provided that "the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax," etc. In this debate it seems generally to be admitted, by gentlemen on the opposite side, that these two words are not synonymous; but what their meaning is, they are not so well agreed. One gentleman tells us, it was intended to prevent slaves from being brought in by land; another gentleman says, it was intended to restrain Congress from interfering with emigration from Europe.

These constructions cannot both be right. The gentlemen who have preceded me on the same side, have advanced a number of pertinent arguments to settle the proper meaning of these words. I, sir, shall not repeat them. Indeed, to me, there is nothing more dry and uninteresting, than discussions to explain the meaning of single words. In the present case, I will only refer to the authority of Mr. Madison and Judge Wilson, who were both members of the Convention, and who gave their construction to these words, long before this question was agitated. Mr. Madison observes, that, to say this clause was intended to prevent emigration does not deserve an answer. And Judge Wilson says, expressly, it was intended to place the new States under the control of Congress, as to the introduction of slaves. The opinion of this latter gentleman is entitled to peculiar weight. After the Convention had labored for weeks on the subject of representation and direct taxes—when those great men were like to separate without obtaining their object, Judge Wilson submitted the provision on this subject, which now stands as a part of your Constitution. Sir, there is no man, from any part of the nation, who understood the system of our Government better than him; not even excepting Virginia, from whence the gentleman from Georgia (Mr. Walker) tells us, we have all our great men.⁵⁰

Madison wrote on the same question that year in a letter to Monroe:

I have been truly astonished at some of the doctrines and declarations to which the Missouri question has led; and particularly so at the interpretation put on the terms "migration or importation &c." Judging from my own impressions I shd. deem it impossible

⁵⁰ *Annals of Congress*, Sixteenth Cong., 1st Session, I, pp. 202-203.

that the memory of any one who was a member of the Genl. Convention, could favor an opinion that the terms did not *exclusively* refer to migration & importation, *into the* U. S. Had they been understood in that Body in the sense now put on them, it is easy to conceive the alienation they would have there created in certain States: and no one can decide better than yourself the effect they would had in the State conventions, if such a meaning had been avowed by the advocates of the Constitution. If a suspicion had existed of such a construction, it wd. at least have made a conspicuous figure among the amendments proposed to the Instrument.⁵¹

There was very little objection to the provision for the return of fugitive slaves. On the twenty-ninth of August, it was agreed that:

“ If any Person bound to service or labor in any of the United States shall escape into another State, He or She shall not be discharged from such services or labor in consequence of any regulations subsisting in the State to which they escape; but shall be delivered up to the person justly claiming their service or labor.” which passed in the affirmative (Ayes—11; noes—0.)

It was moved and seconded to strike out the two last clauses of the 17 article⁵²

On the same day when the question came up again:

Mr. Butler moved to insert after art: XV. “ If any person bound to service or labor in any of the U—States shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulation subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor,” which was agreed to nem: con:⁵³

The Committee of Style reported:

No person legally held to service or labour in one state, escaping into another, shall in consequence of regulations subsisting therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due.⁵⁴

⁵¹ *Documentary History of the Constitution*, V, p. 307.

⁵² *Records of the Federal Convention*, II, p. 446.

⁵³ *Ibid.*, pp. 453–454.

⁵⁴ *Ibid.*, pp. 601–602.

On the thirteenth of September,

On motion of Mr. Randolph the word "servitude" was struck out, and "service" (unanimously) inserted, the former being thought to express the condition of slaves, & the latter the obligations of free persons.⁵⁵

Two days later:

Art. IV. sect 2. parag: 3. the term "legally" was struck out, and "under the laws thereof" inserted (after the word "State,") in compliance with the wish of some who thought the term (legal) equivocal, and favoring the idea that slavery was legal in a moral view—⁵⁶

The Constitution provided then:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law of Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.⁵⁷

⁵⁵ *Records of the Federal Convention*, II, p. 607.

⁵⁶ *Ibid.*, p. 628.

⁵⁷ *Ibid.*, p. 662.